

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF SECOND PUBLIC
ARM 20.7.1101 and 20.7.1102)	HEARING AND EXTENSION
pertaining to conditions on probation)	OF COMMENT PERIOD ON
or parole)	PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 6, 2007, the Department of Corrections published MAR Notice No. 20-7-38 regarding the notice of public hearing on the proposed amendment of the above-stated rules at page 1984 of the 2007 Montana Administrative Register, Issue No. 23.

2. On March 5, 2008, at 10:00 a.m. a second public hearing will be held in Room 24 of the Department of Corrections Annex at 515 N. Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules. This second public hearing supplements the hearing that occurred on January 3, 2008. It has come to the attention of the department that certain interested parties were not initially notified of the proposed rule change. This second hearing has been scheduled to permit those parties to provide testimony and written comment.

3. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on February 27, 2008, to advise us of the nature of the accommodation that you need. Please contact Myrna Omholt-Mason, 1539 11th Ave., P.O. Box 201301, Helena, Montana 59620-1301, telephone: (406) 444-3911, fax: (406) 444-4920, e-mail: momholt-mason@mt.gov.

4. The department is also extending the time within which to submit written comment. Written data, views, or arguments may be submitted to Myrna Omholt-Mason at the contact information listed in paragraph 3, and must be received no later than 5:00 p.m. on March 14, 2008. Testimony and comments that have already been submitted pursuant to the initial notice and hearing need not be repeated.

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

20.7.1101 CONDITIONS ON PROBATION OR PAROLE (1) Residence.
The offender must obtain prior approval from his/her supervising officer before taking
up residence in any location. ~~The probationer/parolee offender~~ shall not change
his/her place of residence without first obtaining written permission from his/her
supervising officer or the officer's designee. The offender must make the residence
open and available to an officer for a home visit or for a search upon reasonable

suspicion. The offender will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.

(2) ~~Travel. The probationer/parolee shall not leave his assigned district without first obtaining written permission from his supervising officer. At the time of his release, the probationer/parolee will be assigned a district and provided written notification of the same.~~ offender must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.

(3) ~~Employment and/or program. The probationer/parolee shall~~ offender must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the offender must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision. He shall not change such employment or program without first obtaining permission from his supervising officer.

(4) ~~Reports. Unless otherwise directed, the offender must~~ The probationer/parolee is required to submit written monthly reports to his/her supervising officer on forms that will be provided by the probation and parole bureau. He shall personally contact his probation/parole officer on the dates and times specified by the officer. The offender must personally contact his/her supervising officer or designee when directed by the officer.

(5) ~~Weapons. The probationer/parolee shall not own, possess or be in control of any firearm, including black powder, or deadly weapon as so defined by state or federal statute. offender is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.~~

(6) ~~Financial. The probationer/parolee shall always consult with his supervising officer and shall~~ offender must obtain permission from his/her supervising officer before engaging in a business, purchasing real or personal property, or purchasing an automobile, or incurring a debt.

(7) ~~Search of person or property. Upon reasonable cause, the probation or parole client shall submit to a search of their person, vehicle or residence by a probation/parole officer at any time without a warrant.~~ suspicion that the offender has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, and residence of the offender, and the offender must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the offender has violated the conditions of supervision.

(8) ~~Laws and conduct. A probationer/parolee shall~~ The offender must comply with all municipal, county, state, and federal laws and ordinances; and He shall further conduct himself/herself as a good citizen. The offender is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The offender must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.

(9) The offender is prohibited from using or possessing alcoholic beverages and illegal drugs, including marijuana, regardless of whether the offender has

received a registry identification card from the Department of Public Health and Human Services pursuant to Title 50, chapter 46, part 1, MCA. The offender is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.

(10) The offender is prohibited from gambling.

(11) The offender shall pay all fines, fees, and restitution ordered by the sentencing court.

(9) (12) Special conditions. The Montana Board of Pardons, and Parole and the sentencing court, or the department of corrections and human services may require other and have the authority to order the offender to abide by additional conditions to be placed upon the probationer or parolee. and such conditions must be contained in the judgment or parole decision. The Department of Corrections may require an offender committed to the department to abide by additional conditions for the privilege of serving the offender's sentence in the community instead of in a correctional facility, prerelease center, or other correctional facility. The conditions shall be in writing by the agency involved and shall be made a part of any agreement signed by the probationer/parolee.

AUTH: 2-4-201, 46-23-1011, 53-1-203, ~~53-24-204~~, MCA

IMP: 46-23-1011, 46-23-1021, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes these rule changes to provide guidance to offenders and probation and parole officers, as well as to the general public. The proposed rule changes are necessary to provide explicit direction to offenders about the types of activities that are restricted or prohibited as well as about the types of activities and behaviors that are expected of offenders while on community supervision. The proposed rule changes are necessary to provide notice to offenders about how their rights may be infringed upon as a result of being supervised in the community instead of being incarcerated. The proposed rule changes are reasonable because they are designed to provide for the safety of the public by permitting adequate monitoring of offenders on probation and parole. The changes are reasonable because they comport with Montana statutes and case law.

These rules have been in existence for several decades without any revision or updating. The changes proposed here have been drafted so as to update and modernize the rules so as to more accurately reflect the reality of supervising felony offenders in the community. Each of the changes are addressed below:

(1) Currently, the rules only address the obligations of an offender when he/she changes residence. The first sentence is proposed so as to encompass the requirement that the offender's address must be approved by the P&P officer upon entering probation or parole. The requirement of obtaining permission is not just for a change of residence. Permission is required of any residence, even the offender's initial residence upon entering supervision.

(2) This proposed change more concisely states the obligation of the offender to obtain permission to travel outside of the designated area.

(3) The addition of the second sentence imposes an obligation on the offender to inform his/her employer of his/her status on probation and parole. The Department of Corrections believes public safety is enhanced by requiring offenders to so inform employers. This sentence also gives discretion to the P&P officer to require additional notification. For example, offenders who are self-employed as carpenters, painters, or in other trades should be required to inform customers of their probationary or parole status. The Department of Corrections believes this is appropriate policy and that the public would want to be informed before permitting someone into their home or residence.

(4) This proposed change more concisely states the obligation of the offender to regularly report to the P&P officer.

(5) This proposed change more concisely states the prohibition against weapons.

(6) This proposed change more concisely states the obligation of the offender to communicate with the P&P officer when contemplating significant financial decisions. All offenders have the financial obligation associated with their crime, including fees and restitution to victims; therefore, this financial condition is necessary and reasonable to provide adequate supervision by the P&P officer.

(7) This proposed change more concisely and accurately states the right of a P&P officer to search the person, residence, or vehicle of an offender upon reasonable suspicion that a violation has occurred.

(8) The second sentence is necessary because P&P officers must know when an offender has had contact with law enforcement. Even so-called minor traffic violations should be reported to P&P officers, but sometimes are not disclosed. It is critical that P&P officers are notified when an offender has contact with law enforcement.

(9) This has been the subject of a recent Supreme Court oral argument during which a justice noted that the Department of Corrections has the authority to promulgate an administrative rule prohibiting offenders on probation or parole from using alcohol. The justice noted that such a rule change would clear up confusion about alcohol use among offenders and would standardize the policy statewide. The Department of Corrections believes this prohibition is critical to protect the public and provide offenders with the best chance at rehabilitation from criminality. As for marijuana, several P&P officers have experienced offenders who have "doctor shopped" so as to obtain permission to use "medical marijuana." Several of these offenders have been convicted of drug offenses. The Department of Corrections believes it is poor public policy to permit offenders to use illegal drugs. The final sentence of this section ensures the P&P officer can test offenders for the use of prohibited substances, a necessary tool to supervise offenders.

(10) Offenders have financial obligations to the state and to the victims of their crimes and gambling is not an appropriate use of the limited financial resources available to most offenders.

(11) This rule concisely states the offender's obligation to pay fines, fees, and restitution.

(12) This rule change concisely states the ability of the Board of Pardons and Parole to impose additional restrictions on an offender who seeks early release on parole.

20.7.1102 WRITTEN AGREEMENT (1) ~~The foregoing conditions will be reduced to writing and indicated as conditions of probation and parole and will be signed by the probationer or parolee before they may be effected.~~ probation and parole officer is required to provide in writing to the offender all of the conditions of probation, parole, or other community supervision. The offender must agree to the conditions before he/she is eligible to be supervised on probation, parole, or other community supervision. Further, such written agreement will contain the following statement: "I do hereby waive extradition to the state of Montana from any state in the union and from any territory or country outside the continental United States or to the state of Montana. I understand that this probation or parole is granted to and accepted by me subject to the conditions, limitations, and restrictions stated herein and with the knowledge that the Montana ~~Board of~~ Pardons and Parole, or the sentencing court or the Montana ~~Department of~~ Corrections and human services have the power at any time in case of violation of the conditions, limitations, and restrictions of my probation or parole, and to cause my detention and return to incarceration at any institution so designated by the department. I have read or have had read to me the foregoing conditions of my probation and parole. I fully understand them and I agree to abide by and strictly follow them and fully understand the penalties involved should I in any manner violate the foregoing conditions, limitation, or restrictions."

AUTH: 2-4-201, MCA
IMP: 46-23-1101, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule change is necessary to clarify the obligation of the P&P officer to provide a written copy of the rules to the offender. The rule change is necessary to ensure that the offender will not be supervised unless he/she agrees to and signs the rules. The rule change is reasonable because it is designed to provide written notice to the offender of his/her obligations while supervised in the community.

6. The Department of Corrections maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the Department of Corrections, 1539 11th Ave., Helena, MT 59601, by fax to (406) 444-4920, by e-mail to momholt-mason@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Notice of Public Hearing is available through the department's web site at www.cor.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register. However, the department advises that it will decide any conflict between the official version and the electronic

version in favor of the official printed version. In addition, the department advises that the web site may be inaccessible at times, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. Brenda Elias, Hearings Examiner, will preside over and conduct the hearing.

/s/ Mike Ferriter
MIKE FERRITER
Director of Corrections

/s/ Coleen A. White
COLLEEN A. WHITE
Rule Reviewer

Certified to the Secretary of State February 4, 2008.